HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 6911 OF 1998

DATED: 28.3.2007

Between:

T.Audinarayana son of T.Ramulu

.Petitioner

and

The Managing Director, AP.Women's Co-operative Finance Corporation Ltd., and another

…Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.6911 OF 1998

ORAL ORDER:

The petitioner claims to have entered service in the A.P. Women's Cooperative Finance Corporation Limited, Hyderabad on 06-12-1988 as a Watchman, after what he claims to be, a regular process of selection by a duly constituted selection committee. He claims to continuous service thereafter with artificial breaks every six months, up to the date of filing the writ petition. He claims to be have qualified for regularisation and absorption. He however complains that he is being paid consolidated salary and not according to a scale of pay. After he was appointed in the respondent-Corporation, his name was also deleted from the relevant Employment Exchange. He is now beyond the eligible age for public employment. In the circumstances he seeks in substance, the relief of regularisation in the service of the Corporation in the post of a Watchman with effect from the date of initial appointment with all consequential benefits, including notional seniority, attendant monetary benefits etc.,

The petitioner states that in similar circumstances in W.P.No.17938 of 1996 by the judgment dated.31-12-1996 a learned single Judge had directed the Corporation to regularise the service of the petitioners therein and pay them regular scales of pay. Writ Appeal Nos.334 of 1997 and batch preferred against the said judgment are also stated to have been

dismissed by a Bench of this Court on 05-08-1997. The learned counsel for the petitioner further states that the Corporation had preferred S.L.Ps against the judgment of the Division Bench and these are pending. The learned counsel for the respondent-Corporation has stated that in W.A.Nos.374 of 1997 and batch it was noticed that the claim for regularisation in G.O.Ms.No.212 dated.22-04-1994 was substituted by a scheme of regularisation incorporated by Act 3/98. Be that as it may.

According to the 1st respondent the petitioner was appointed on 06-12-1984 as a Watchman-cum-Gardener and joined duty on the said date and has not completed five years of service on 25-11-1993 and was on consolidated wages. The petitioner's post was not sanctioned by the Government and the cadre strength of A.P. Women's Cooperative Finance Corporation Limited, Hyderabad has not yet been approved by the State Government, as is required by law. The petitioner has not completed five years of service as on 25-11-1993, which is the relevant date for entitlement for consideration for regularisation under G.O.Ms.No.212 dated.22-04-1994. On these pleaded facts, the Corporation claims that the petitioner is not entitled to regularisation.

The petitioner has not chosen to rebut the assertion by the respondent-Corporation that there is no sanctioned post of Watchman-cum-Gardener in the Corporation, a post which has been sanctioned by the Government. True it is, that the petitioner has been working from 06-12-1988 till the date of filing of the writ petition and thereafter pursuant to interim orders of this Court. In view of the law laid down by a Constitution Bench of Supreme Court in **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others([1]),** in the absence of a sanctioned post no appointment, leave alone regularisation of

such appointment could be done. Availability of a sanctioned and duly created post is a condition precedent for appointment to such a post in public service. In the decision supra, the Supreme Court has also frowned upon and declared impermissible regularisation as a mode of recruitment. Even according to G.O.Ms.No.212 an employee should have put in five years of service as on 25-11-1993 for entitlement to regularisation. This qualification the petitioner does not have. Also, the petitioner was not appointed to a sanctioned post.

For the aforesaid reasons the petitioner is not entitled to relief. There are no merits. The writ petition is accordingly dismissed. No order as to costs.

GODA RAGHURAM,J

28th MARCH,2007
*TSNR

[1] (2006) 4 SCC 1